REMARKS

Claims 27-39 and 41-43 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 9-17 of U.S. Patent No. 6,297,129. Claim 40 stands rejected under the statutory-type double patenting (35 U.S.C. §101) as claiming the same invention as that of claim 8 of prior U.S. Patent No. 6,297,129.

Claims 27, 34, 38, 40 and 41 are objected to for insufficient antecedent basis. Such claims are amended to provide proper antecedent basis, and therefore, the objections are overcome and should be withdrawn. Please note, the amendments to claims 27, 34, 38, 40 and 41 more positively recite limitations previously inherent in such claims and do not narrow the scope of any claim.

Claim 40 stands rejected under the statutory-type double patenting (35 U.S.C. §101) as claiming the same invention as that of claim 8 of prior U.S. Patent No. 6,297,129. The rejection is in error and should be withdrawn. Regarding statutory-type double patenting, the Examiner is respectfully reminded that MPEP §804 (8th ed. Revision no. 2) states, in part: "A reliable test for double patenting under 35 U.S.C. §101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970)."

Claim 40 of the present application recites forming LOCOS field oxide by providing nitride masking blocks over a **semiconductor substrate** and forming

an array of word lines and bit lines over the **semiconductor substrate** to define an array of DRAM cells. Claim 8 of U.S. Patent No. 6,297,129 recites forming LOCOS field oxide by providing nitride masking blocks over a **bulk silicon semiconductor substrate** and forming an array of word lines and bit lines over the **bulk silicon semiconductive substrate** to define an array of DRAM cells. Applicant has deleted the reference to "bulk" from pending claim 40. Accordingly, limitations are recited in claim 8 which are not recited anywhere in claim 40. Consequently, by definition of literal infringement, it is possible to literally infringe claim 40 without literally infringing claim 8. Pursuant to the above authority and test for determining an appropriate statutory-type double patenting rejection, since claim 40 in the present application can be literally infringed without literally infringing the corresponding device of claim 8 of U.S. Patent No. 6,297,129, the statutory-type double patenting rejection is improper for at least this reason. The statutory-type double patenting rejection against claim 40 must be withdrawn.

Applicants respectfully request a telephone call to the undersigned if the Examiner disagrees with Applicants' position regarding the statutory double patenting rejection in an effort to further this aspect of the prosecution.

Claims 27-39 and 41-43 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 9-17 of U.S. Patent No. 6,297,129. Responsive to the Office Action dated September 21, 2004, a timely filed terminal disclaimer in compliance with 37 CFR

1.321(c) is enclosed to overcome the rejection based on the nonstatutory double patenting ground. Said disclaimer also provides information that the conflicting application or patent is shown to be commonly owned with this application.

No other rejections are presented against the claims, and therefore, the claims are allowable.

This application is now believed to be in immediate condition for allowance, and action to that end is respectfully requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any such subsequent action.

Respectfully submitted,

Dated: 1-4-05 By: _____

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